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CITIZENSHIP IN TIMES OF TERROR: CITIZENSHIP DEPRIVATION IN THE UK*

Sandra Mantu

Abstract

Legally, citizenship may be labelled as a secure status, if not the most secure status a person can enjoy. This is well illustrated when contrasting citizenship with other types of legal statuses that are essentially related to or based on migration: foreigner, refugee, irregular migrant etc. This paper interrogates the received wisdom about citizenship as a secure and stable legal status by analysing the repeated changes operated by the UK regarding the legal rules on loss of citizenship. Since the beginning of the 21st century, the UK rules on citizenship deprivation have been amended several times with the aim of getting rid of citizens who engage in activities deemed undesirable by the executive. The latest change to the law was adopted in 2014 and allows for loss of citizenship leading to statelessness where the person concerned has acquired UK citizenship by naturalisation. Up to now, based on case law and public information available about the cases in which the UK executive has issued citizenship deprivation orders, these activities relate to terrorism and are part of a discourse about security. To this end, the attempt to get rid of dangerous citizens can be read as a security project aimed at creating safe and loyal citizens. However, the security aspect of citizenship deprivation is also coupled with a discourse that presents citizenship as a privilege to be bestowed by the executive, and not as a legal status. Although not a new trope in governmental discourses about membership and identity, presenting citizenship as a privilege raises some fundamental questions about the relationship between the state and the citizen and the manner in which citizens should be treated when they no longer conform to certain ideals about membership.

Keywords

citizenship, loss of citizenship, terrorism, migration, UK Parliament, Secretary of State for the Home Department

1 Introduction

This paper examines the legal practice of citizenship deprivation in the UK and its implications for the notion of citizenship more generally. Citizenship deprivation is a type of loss of citizenship and refers to the power of the executive to take away or strip citizenship against the wishes of the person concerned. Generally speaking, citizenship deprivation can occur on grounds of fraud in relation to the acquisition of citizenship or due to behaviours deemed unacceptable by the state such as, involvement in terrorism or commission of certain (criminal) acts. Despite the existence of a vast literature concerning citizenship, loss of citizenship remains a largely unexplored topic. This can be explained by the fact that for several decades the most important issue in respect of nationality has been the integration of large numbers of migrants within European

states. Naturalisation policy and politics¹ coupled with the issue of dual nationality² have dominated the agenda, leading to various attempts to compare and classify the nationality legislations of European states, especially in relation to their liberal character or lack thereof. Focusing primarily on naturalisation policies, some authors have identified a liberal trend in the nationality policies of most European states.³

However, focusing only on naturalisation and dual nationality policies fails to offer a complete picture of the overall nationality legislation and policy of a particular state.⁴ The lack of interest in citizenship deprivation has been explained as a downside of the liberal trend identified in nationality politics or as relating to the small number of persons denaturalised in the post WWII era.⁵ Another possible explanation may relate to the fact that the restrictive mood that has affected migration policy after 2000, and even more so in the aftermath of the 'war on terror' combined with the alleged failure of multiculturalism⁶ have spilled over into the field of nationality acquisition leading to more restrictive policies and more cumbersome procedures to be followed entailing, for example, citizenship and integration courses before becoming a citizen.⁷ The magnitude of the changes brought in this area of nationality attribution seems to have overshadowed those dealing with loss of citizenship. Nevertheless, both sides of nationality attribution are part of a symbolic field of state power that dictates the composition of the citizenry, therefore affecting underlying ideals of identity and membership. The resurrection of the importance

1 T.A. Aleinikoff and D. Klusmeyer (eds) (2000) *From Migrants to Citizens: Membership in a Changing World*, Washington DC: Carnegie Endowment for International Peace; T.A. Aleinikoff and D. Klusmeyer (eds) (2001) *Citizenship Today: Global Perspectives and Practices*, Washington DC: Carnegie Endowment for International Peace; R. Hansen and P. Weil (eds) (2001) *Towards a European Nationality: Citizenship, Immigration and Nationality Law in the EU*, New York: Palgrave; T.A. Aleinikoff and D. Klusmeyer (eds) (2002) *Citizenship Policies for an Age of Migration*, Washington DC: Carnegie Endowment for International Peace; M.M. Howard (2006) Comparative citizenship: an agenda for cross-national research, *Perspectives on Politics* 4:3, p. 443-455; M.M. Howard (2010) The Impact of the Far Right on Citizenship Policy in Europe: Explaining Continuity and Change, *Journal of Ethnic and Migration Studies* 36:5, pp. 735-751.

2 O. Vonk (2012) *Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States*, The Hague: Martinus Nijhoff Publishers; R. Hansen and P. Weil (eds) (2002) *Dual Nationality, Social Rights and Federal Citizenship in the US and Europe: The Reinvention of Citizenship*, New York: Berghahn; M.M. Howard (2005) Variation in dual citizenship policies in the countries of the EU, *International Migration Review* 39:3, pp. 697-720.

3 C. Joppke (2010) *Citizenship and Immigration*, Cambridge: Polity Press; M.M. Howard (2010) The Impact of the Far Right on Citizenship Policy in Europe: Explaining Continuity and Change, *Journal of Ethnic and Migration Studies* 36:5, pp. 735-751.

4 M.M. Howard (2010) p. 737. The coordinates used by Howard to classify a particular citizenship policy as liberal or not include the usage of *ius soli*, the number of years of residence required for naturalisation and the toleration of dual nationality. The rules on loss are not taken into account or even mentioned.

5 M. Gibney (2012) 'A Very Transcendental Power': Denaturalisation and the Liberalisation of Citizenship in the United Kingdom, *Political Studies* 61:3, pp. 637-655.

6 For a critical appraisal of multiculturalism, see W. Kymlicka (2012) Multiculturalism: Success, Failure and the Future, in: Migration Policy Institute (ed.) *Rethinking National Identity in the Age of Migration*, Berlin: Verlag Bertelsmann Stiftung.

7 R. van Oers (2013) *Deserving citizenship – Citizenship tests in Germany, the Netherlands and the United Kingdom*, Nijmegen: Wolf Legal Publishers.

attached to loyalty as the citizen's main duty towards his/her state suggests that the rules on loss of citizenship like those dealing with naturalization, express ideals of membership and identity and that the citizenship status of certain types of citizens is contingent upon meeting these ideals. The argument this paper puts forward, is that the legal rules on loss of citizenship are equally important in affecting membership in a political community and in upholding an ideal model of the citizen.

Looking at citizenship revocation from the perspective of liberalism as the underlying political ideology of European states, Gibney has argued that denaturalisation highlights some profound tensions between the values held by liberals and the individual's right to citizenship somewhere.⁸ The liberal conception of citizenship is based on the idea of a social contract, which in turn presupposes consent. The metaphor of contract allows the revocation of citizenship in case those who entered the contract voluntarily break its rules. Gibney points out that this particular way of legitimizing citizenship deprivation is problematic, especially since modern states are made up by a mixture of citizens. Some citizens have entered the contract voluntarily via naturalisation and some have been born into the contract without necessarily expressing their consent.⁹ This suggests that only the citizenship status of those who acquired it via naturalisation is at risk when engaging in acts that violate the rules of engagement. This goes against the central principle of liberal citizenship that all citizens are equal before the law. Other explanations for the use of citizenship deprivation suggest that we are actually witnessing a new way of conceptualising state power whereby depriving individuals of their citizenship status is a form of penal sanction to be applied to citizens in response to perceived crimes against public security by act or by association.¹⁰

In comparison to the legal position of foreigners, citizenship is seen as a stable and secure legal status that entitles its carrier to the protection of his state of nationality. Legally, this is expressed by principles of international law that require states to take back their own nationals and prevent them from expelling their own nationals.¹¹ At the same time, international law attaches importance to state sovereignty and its tenet that states have the power to set down rules for the acquisition and loss of their citizenship. Based on Max Weber's definition of the state, modern sovereignty has been theorized as 'encompass-

⁸ Gibney (2012).

⁹ Ibid.

¹⁰ Kingston (2005) p. 24.

¹¹ A. Kesby (2012) *The Right to Have Rights: Citizenship, Humanity, and International Law*, Oxford University Press, pp 16-17.

ing the idea of a political system where authority is based on exclusive command over territory and a degree of autonomy'.¹² Moreover, states are described as free to determine who the members of the national community are. By designing legal rules dealing with the acquisition and loss of citizenship, states engage in a series of legal practices that shape the personal scope of national citizenship. Therefore, citizenship can be described as involving both inclusio- nary and exclusionary practices that are meant to express the meaning of identity and belonging within a specific political community. UK's changing le- gal regime of citizenship deprivation illustrates well the complexity of the issue and its intersection with immigration and security.

At the beginning of the 21st century, the UK launched an overhaul of its rules on citizenship acquisition and loss with the overall effect that acquiring citizen- ship was made more difficult while the rules on loss of citizenship have been relaxed and the executive was given increasing powers in this area of law. The adoption of legislative acts changing the rules of nationality attribution was coupled with vivid debates regarding the meaning of citizenship taking place within UK political and public spaces. The power of the Secretary of State for the Home Department to deprive British citizens of their status has taken centre stage among the statutory grounds of loss of citizenship, as the deprivation provisions have been amended in 2002, 2006 and 2014.

2. Modern Nationality law and citizenship deprivation

Throughout the 20th century, British nationality legislation underwent significant changes that mirror the trajectory of the British state itself. The result is a com- plex area of law comprising a variety of statutes and citizenships, all with dif- ferent rights attached to them.¹³ The rules on deprivation were introduced at the beginning of the 20th century in a context of rising immigration when fears that the welfare state pioneered in the UK might attract unsuitable citizens. The 1914 *Nationality Act* was the first attempt to introduce a standardized natura- lisation procedure across the Empire and a common nationality status based upon allegiance to the imperial Crown (the so-called Common Code). The 1914 Act introduced provisions dealing with deprivation of citizenship that empo- wered the Secretary of State to revoke a naturalisation certificate obtained by fraud, false representation or concealment of material circumstances.¹⁴ The is-

¹² Levy and Sznajder (2006) p. 670.

¹³ A. Dummett (2006) United Kingdom, in R. Bauböck, E. Ersbøll, K. Groenendijk and H. Waldrauch (eds) *Acquisition and Loss of Nationality* (vol 2: Country Analyses), Amsterdam: Amsterdam University Press, pp.551-585. There are 6 nationality statuses, 3 of which are labelled a form of citizenship. These statuses are: British citizenship, British Overseas Territories citizenship (former British Dependent Territories Citizenship), British Overseas citizenship, British subjects, British protected persons and British nationals.

¹⁴ Section 7(1) of the 1914 British Nationality and Status of Aliens Act.

sue was revived in the context of the First World War, and in 1918, extended powers of deprivation were further introduced targeting naturalised Britons of German origin.¹⁵ Moreover, the Secretary of State gained the power to revoke certificates in cases of treason or disloyalty. Other grounds of loss included residence abroad for longer than 7 years and being sentenced to prison for longer than 1 year within 5 years after naturalisation. According to Gibney most cases of deprivation were due to residence outside of the Kingdom and not because of fraud or treason.¹⁶ The loyalty of naturalised citizens of enemy origin was questioned again during WWII, but after the end of the war the British government focused primarily on limiting the immigration of former colonial subjects to mainland UK.¹⁷ Although nationality legislation was amended several times after WWII in order to reflect the end of the UK as a colonial power and to restrict immigration, the rules on citizenship deprivation remained pretty much the same. Changes were operated in 1964 in view of UK's ratification of the 1961 UN Convention on the Reduction of Statelessness: the possibility to be stripped of citizenship on grounds of residence in foreign countries was removed from the law; and in order to meet UK's obligations in the field of statelessness, citizenship deprivation in case of criminal conviction was allowed only in situations where it would not lead to statelessness.¹⁸

The 1981 British Nationality Act, which is the last major revision of the nationality law did not bring changes to the rules on loss, which suggests that the issue did not command much interest. Registered or naturalised citizens were liable to lose their status if (1) citizenship had been obtained by fraud, misrepresentation or concealment of a material fact; (2) were disloyal to the Queen; (3) had assisted the enemy in time of war or, (4) in the past five years after naturalisation, had been sentenced to at least twelve months imprisonment in any country. Fransman mentions 12 deprivations under BNA 1948 (applicable until the entry into force of BNA 1981) - 5 for spying or disloyalty, 5 on criminal grounds and 2 for fraud or misrepresentation. A further 18 cases took place in the dependent territories.¹⁹ Dummett mentions that about a dozen people have ever been deprived.²⁰ In 2002, the UK executive confirmed that the power had

¹⁵ Women and children would also lose their nationality in case the husband's nationality had been revoked. For more details, see L. Fransman (1989) *British Nationality Law*, London: Fourmat Publishing, p. 51.

¹⁶ M. Gibney (2011) *Should citizenship be conditional? Denationalisation and liberal principles*, Refugee Studies Centre WP 75.

¹⁷ A. Dummett (1986) *Towards a Just Immigration Policy*, Cobden Trust, p. 144.

¹⁸ *British Nationality (no. 2) Act 1964*, entered into force on 16 September 1964

¹⁹ Fransman (1989) pp. 194-195.

²⁰ Dummett (2006) p. 571.

been used rarely – at that moment, the last case of deprivation had taken place in 1973.²¹

The 1981 British Nationality Act (BNA) remains the statutory legal basis for acquisition and loss of UK citizenship, although the act itself was amended several times since it came into force.²² The citizenship regime uses a mix of *ius sanguinis* and *ius soli* for acquisition, while also providing for naturalisation and registration as further modes of citizenship acquisition. British citizenship can be lost on grounds of renunciation (section 12 BNA), where the British citizen makes a declaration of renunciation of British citizenship that has to be registered by the Secretary of State. The aim is to prevent statelessness resulting from loss of British citizenship. To this extent, the Secretary of State must be satisfied that the person concerned either has a second nationality or will acquire one. Section 13 of BNA 1981 allows for resumption of British citizenship in case of persons who renounced British citizenship. Section 40 of the Act deals with deprivation of citizenship, which under the current regime is allowed in two main situations. Firstly, the Secretary of State may deprive in cases of fraud, false representation or concealment of a material fact. Secondly, the Secretary of State may deprive a person of a citizenship status which results from his registration or naturalisation if he is satisfied that deprivation is conducive to the public good. Statelessness may occur as a result of citizenship deprivation in cases of fraud and since 2014 where naturalised citizens are concerned.

3. In search of ideal citizens – Britishness redefined

At the beginning of the 21st century the UK government launched an overhaul of the applicable rules of citizenship deprivation as part of a wider process of redesigning nationality laws with a view to restrict immigration and respond to concerns about national security. The need to rediscover the meaning of Britishness and citizenship has fuelled these changes as well as the idea that British citizenship is a status that needs to be earned, by both naturalised citizens and those who acquired their status at birth, provided that they hold a second nationality as well. As a result, between 2002 and 2015, there have been 3 major changes to the citizenship deprivation provisions on grounds other than fraud and one change concerning appeal rights which is relevant for understanding the relationship between citizenship deprivation and expulsion.

21 Home Office (2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, London etc.: TSO, p. 35, para. 2.22.

22 C. Sawyer and H. Wray (2012) *Country Report: United Kingdom*, EUDO Citizenship Observatory.

While multiculturalism, integration and the meaning of Britishness were increasingly scrutinised in public and political spheres, citizenship became a meta-issue.²³ The incidence of race riots in northern England in May 2001 gave a new impetus to this debate, which resulted in several reports commissioned under the Labour governments (1997-2010). The various proposals put forward by these reports are interpreted as highlighting Labour's contractual approach to citizenship and the idea that citizenship must be earned.²⁴ The British government became increasingly preoccupied with integration and the discovery of common held values that would define Britishness. After the Conservative party came to power in 2010, the restriction of immigration and asylum have remained a major preoccupation for the executive, while the number of persons deprived of citizenship has increased.²⁵ At the same time, the British executive, irrespective of its political affiliation, has increasingly labelled UK citizenship a privilege that can be withdrawn from those unworthy of it.

Initially, governmental discourse presented the need to redesign the rules of nationality attribution as directly relating to questions of migration and membership. The 2002 White Paper 'Secure Borders, Safe Haven' set out the key objectives for the further development of citizenship and nationality policy and emphasised that

*'the first challenge migration poses is to our concepts of national identity and citizenship and therefore, in order to ensure social integration and cohesion in the UK, there is a need to develop a stronger understanding of what citizenship really means.'*²⁶

With migration, citizenship and nationality thus bundled together the rethinking of citizenship along the lines of immigration was firmly grounded in government discourse. Lord's Goldsmith report on citizenship in the UK developed this vision of citizenship further while acknowledging the need to make fundamental changes to the design of citizenship laws.²⁷

23 D. Kiwan (2008) A Journey to Citizenship in the United Kingdom, *International Journal on Multicultural Societies* 10:1, pp. 60-75; H. Majid (2008) Protecting the Right to Have Rights: The Case of Section 56 of the Immigration, Asylum and Nationality Act 2006, *Immigration, Asylum and Nationality Law* 22: 1, pp. 27-44.

24 Everson (2003).

25 During a Q&A session in 2013, a government representative revealed the following numbers: 2006 – one case, the person was outside of the UK; 2007 – one case; 2008 – none; 2009 – two cases, one person was outside of the UK; 2010 – five cases, all persons were outside of the UK; 2011 and 2012 – six cases and 2013 – three cases. House of Commons Debate 3 June 2013, c892-3W.

26 Home Office (2002) *Secure Borders, Safe Haven*, pp. 9-10.

27 Lord Goldsmith, *Citizenship: Our Common Bond*, <http://www.justice.gov.uk/reviews/docs/citizenship-report-full.pdf>. These changes were meant to be operated via the 2009 Borders, Citizenship and Immigration Bill that received royal assent but was not put into practice by the Conservative government.

The report also recommended the reform of the law of treason in order to make the duty of allegiance relevant to modern conditions.²⁸ The resuscitation of allegiance is best understood in the context of what the report calls the enhancement of ‘our national narrative’,²⁹ a choice of words that cannot escape notice. Although migration and its impact for notions of identity and Britishness were the focus points of this debate, UK’s attempt to define its concept of citizenship is much more complex. To a certain extent it was fuelled by UK’s accession to the European Community³⁰ and internal processes such as devolution and its implications for the fragmentation of citizenship and the legitimacy of political representation.³¹ Nevertheless, these aspects were not clearly contoured in the discussions about the need to revise the rules on nationality attribution and make them relevant for 21st century Britain.

In the aftermath of 9/11 and UK’s support for the USA in the ‘war on terror’, the focus shifted and it became clearer that the attempt to define Britishness was also part of an official discourse that tried to redefine citizenship in the broader context of immigration management and the fight against terrorism. While the connection between nationality and immigration has always been there (one could argue that it is the main constant in UK nationality legislation during the 20th century), the connection with counter-terrorism was new. This is an interesting development because terrorism as such was not a new phenomenon for the UK government (Irish terrorism has always been a particularly problematic issue). Moreover by 2000, the UK government had already embarked upon the redrawing of its terrorist legislation. *The Terrorism Act 2000* (came into force on 19 February 2001) replaced previous, ‘temporary’ anti-terrorist legislation and addressed for the first time the issue of domestic acts of terrorism.³² It also set the trend of the future legislation on terrorism that generally aims at preventing terrorism-related activities ‘irrespective of nationality or terrorist cause’³³ and the establishment of extra-territorial jurisdiction. ‘Home-grown terrorists’ and radicalised citizens travelling to join terrorist groups in the Far East remain a challenge for the UK executive, which it has

28 *Id.*, p. 7.

29 It is argued that, ‘further consideration should be given to a narrative, non-legalistic statement of the rights and responsibilities of citizenship; and a national day –introduced to coincide with the Olympics and Diamond Jubilee – which would provide an annual focus for our national narrative.’ Lord Goldsmith, p. 7.

30 F. Dell’Olio (2002) *The Redefinition of the Concept of Nationality in the UK: Between Historical Responsibility and Normative Challenges*, *Politics* 22:1, pp. 9-16.

31 C. Jeffery and D. Wincott (2006) *Devolution in the United Kingdom: Statehood and Citizenship in Transition*, *Publius: The Journal of Federalism*, 36:1, pp. 3-18.

32 M. Peck (2006) *The Terrorism Bill 2005-2006*, Research Paper 06/66, p. 7, <http://www.parliament.uk>.

33 *Id.*, p. 8.

tried to deal, with (among others) by expanding the power to deprive of citizenship. Citizenship, immigration and security in the form of terrorism are intrinsically linked and in the process of making them inseparable, the idea that citizenship is a privilege not a legal status became salient.

4. The Nationality, Immigration and Asylum Act 2002 – making citizenship matter

The Government's proposals regarding the review of nationality and citizenship legislation, announced in its 2002 White Paper, have been implemented by the *Nationality, Immigration and Asylum Act 2002*, which despite its name, deals largely with immigration and asylum.³⁴

The 2002 White Paper emphasised the need to make the entire process of naturalisation more visible, including by upgrading the deprivation of citizenship procedures.³⁵ For the first time in the history of modern nationality legislation in the UK, the 2002 Act expanded the powers of the Secretary of State to deprive of citizenship British citizens by birth or descent. Section 40(2) allowed the Secretary of State to deprive by order *“a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of the United Kingdom or a British Overseas territory.”* However, because section 40(4) restricted the power of the Secretary of State only to cases where the person would not become stateless because of loss of citizenship, the provision applied only in respect of dual nationals. Section 40(3) dealt with the power of the Secretary of State to deprive by order a registered or naturalised citizen if he/she is satisfied that the registration or naturalisation was obtained by means of fraud, false representation or concealment of a material fact. Deprivation was allowed in this case regardless of the fact that the person could become stateless.³⁶

As a positive development, the 2002 Act introduced procedural safeguards against the decision to deprive.³⁷ Most commentators have welcomed them, since under the BNA 1981 the Secretary of State enjoyed discretion as to deci-

34 The Nationality, Immigration and Asylum Act 2002 received royal assent on 7 November 2002. Several parts of the Act have entered into force later.

35 The 2002 White Paper particularly criticized the automatic character of the naturalisation process and argued that it did not mark the importance of this step in a person's life. As such, the 2002 Act brought important changes to the naturalisation procedure; it required applicants to have knowledge of language and society, expanded the language test to spouses applying for naturalisation, introduced citizenship ceremonies, as well as, an oath and pledge.

36 There is no change in respect of this case of deprivation; the previous legislation contained the same provision. Despite that fact that it may lead to statelessness, this approach is in line with the international standards on nationality set by both the 1961 UN Convention and the Council of Europe in the ECN.

37 Section 40A

sions relating to nationality; such decisions were not subject to appeal or review in any court. The amendments were introduced in order to make the UK legislation compatible with the requirements of the European Convention on Nationality (ECN), which at that time, the UK government claimed it intended to ratify. However, the law also provided for exceptions: when the Secretary of State certifies that the decision to deprive is based, wholly or partially, in reliance to information that he believes should not be made public in the interests of national security or of the relationship between the United Kingdom and another country or otherwise, in the public interest,³⁸ the appeal is to be heard by the Special Immigration Appeals Commission (SIAC). Initially, SIAC was set up to hear cases of deportation in which the decision is based on sensitive information that cannot be reviewed by the ordinary courts, nor fully disclosed to the parties.³⁹ Furthermore, under the 2002 provisions a deprivation order could not be made while any appeal was pending or while the possibility of launching an appeal within the time limit remained.⁴⁰ In 2004, this aspect of the law was changed to allow a citizenship deprivation order to have immediate legal effect. The consequence is that the person against whom the order is made, although retains the right to appeal the decision, becomes a foreigner and is therefore subjected to immigration control. If outside of the UK when deprived, an exclusion from the UK order can be made against him preventing him from entering the UK, leading to an out of country appeal procedure.⁴¹

Bearing in mind that, at that particular moment, the last case of citizenship deprivation had taken place in 1973, the real question is why the government felt the need to introduce new powers.⁴² The Government's response relies on two arguments. From the 2002 White Paper '*Secure Borders, Safe Haven*', it can be

38 Section 40A (2). There is no definition of these grounds in the Act.

39 SIAC Act 1997. The introduction of SIAC relates to the criticism voiced by the ECtHR regarding the lack of appeal against the Home Secretary's decision to deport on national security grounds or to exclude from the United Kingdom on grounds that this was conducive to the public good. Under the Anti-Terrorism, Crime and Security Act 2001, the Commission has jurisdiction to hear appeals against decisions of the Secretary of State to certify suspected terrorists. The intelligence, upon which the decision was reached, is not disclosed to the appellant but he is appointed a Special Advocate who has partial access to the said material. See, P. Catz (2003) United Kingdom: Withdrawing from International Human Rights Standards, in E. Brouwer, P. Catz, E. Guild (eds), *Immigration, Asylum and Terrorism: A changing Dynamic in European Law, Recht & Samenleving* 19, Nijmegen: GNI, pp. 86-87; D. Bonner and R. Cholewinski (2007) The Response of the United Kingdom's Legal and Constitutional Orders to the 1991 Gulf War and the Post -9/11 'War' on Terrorism, in E. Guild and A. Baldaccini (eds), *Terrorism and the Foreigner*, Brill, pp. 123-175.

40 Section 40A(6). The Home Secretary first had to make a notice of her decision to deprive but the actual order was made after the time limit for launching the appeal had passed or where the notice was appealed, after the court took its decision.

41 Schedule 4 to the Asylum and Immigration (Treatment of Claimants etc) Act 2004; SSHD (respondent) v. B2 (appellant), Case ID: UKSC 2013/0150 [accessed 19 January 2015]; G1 v. SSHD [2010] EWCA Civ 867; L1 v. SSHD, SC/100/2010, date of judgment 3 December 2010.

42 See also, the comments of ILPA on the 2002 Bill.

inferred that the review of the deprivation powers was among the measures aimed at injecting valour in the entire naturalisation process, by stressing the importance of citizenship per se.⁴³ In addition, the UK executive considered that the previous wording of the deprivation powers did not reflect accurately *'the types of activity that might threaten our democratic institutions and way of life. September 11th provided a horrific illustration of the sort of threat we have in mind'*.⁴⁴ During the debates in both Houses of Parliament, the Government's contention that the expansion of the power to deprive would aid in the war against terrorism has been scrutinized and considered unconvincing, especially in the light of the extensive measures introduced earlier by the *Anti-terrorism, Crime and Security Act 2001* to deal with persons committing terrorism related offences. The main concern was that, in reality, the Government was trying to deal with such persons by the back door and instead of prosecuting them it would first deprive them of citizenship and then extradite them to a different country, possibly without sufficient guarantees against torture or other prohibited treatments under Article 3 ECHR.⁴⁵ The British government clarified that the scope *ratio materiae* of the new deprivation power encompassed national security and other prejudicial activities that had to do with infrastructure, vital economic interests and the general safety of the population.⁴⁶ They reassured that *'the term vital interests will be interpreted as covering threats to national and economic security and to public safety ...but not actions of a more general criminal nature'*.⁴⁷ Rather worryingly, the executive explained that it wished to be able to deprive of citizenship irrespective of the behaviour in question giving rise to criminal liability.⁴⁸ This suggests the disjunction between committing a criminal act and being deprived of citizenship. Citizenship deprivation is seen as an alternative to the traditional avenue of imposing criminal sanctions but for the person concerned it leads to a lower threshold of protection than that

43 In the 2002 White Paper 'Secure Borders, Safe Haven', (para. 2.22) it is argued that 'the Government believes that a corollary of attaching importance to British citizenship is that the UK should use the power to deprive someone of that citizenship – for example where it has been acquired through some form of deception or concealment and where that individual would not have been granted citizenship had they disclosed information requested from them'.

44 Select Committee on the Constitution, 6th Report, 17 June 2002, HL Paper 129, p. 6.

45 Nationality, Immigration and Asylum bill 2002, Hansard debate 09 October 2002, vol. 639, cc 273-274. The Lords have also found it difficult to believe that by severing the link of allegiance via deprivation of citizenship, the person concerned would feel less inclined to engage in activities against the interest of the UK in the future.

46 See HC Committee, 30.04.02 cols 60-62; HL Committee 08.07.02 col 505.

47 HL Committee 08.07.02 col 537.

48 '...we do not believe that liability to deprivation should arise only following a conviction. For example, there may be situations where the evidence of seriously prejudicial conduct would not be admissible in criminal proceedings. The protection of vital interests which the deprivation provisions would allow would extend wider than that afforded by criminal law.' Nationality, Immigration and Asylum bill 2002, Hansard debate 09 October 2002, vol 639, cc 280-281.

afforded to citizens in general as a result of constitutional arrangements in respect of criminal liability.

The Government's claim, that the clause would in fact end discrimination in the removal of citizenship between citizens by birth and naturalised ones, has been challenged as several Lords argued that the new clause introduced a new discrimination ground, between dual and mono-citizens.⁴⁹ The issue is not without relevance since there are no statistics in the UK on the number of citizens holding a second nationality⁵⁰ and the UK is perceived as a country with a relaxed attitude towards dual nationality. By making citizenship deprivation applicable only in respect of dual nationals, the issue of allegiance and loyalty towards the UK became relevant since dual nationality in combination with engaging in behaviours that are not approved by the state opens up the possibility to lose citizenship.

5. The Immigration, Asylum and Nationality Act 2006 – conducive to the public good

It The 7 July 2005 London bombings occurred shortly after a new bill on immigration, asylum and nationality had been introduced in the UK Parliament.⁵¹ The bill was adopted one year later as the *Immigration, Asylum and Nationality Act 2006*. Although the changes proposed had been elaborated before the London bombings, the legislative process of the law's adoption was clearly under their influence. Shortly after the terrorist bombings, the then newly re-elected prime minister Tony Blair announced in a press conference a twelve point plan of anti-terror measures, in which direct reference was made to citizenship deprivation powers.⁵² Based upon the same plan, the Government came up with a list of unacceptable behaviours that constitute grounds for deportation and exclusion from the UK, as well as, extended the use of control orders for those who are British nationals and cannot be deported. Generally, the government's response to the terrorist threat has materialized in a series of legislative and executive measures in which deportation and detention, not necessarily based on judicial scrutiny, were the main denominators.

49 Hansard deb 09 October 2002, vol 639, cc 273, 275.

50 Written answers Hansard, 13 Feb 2013: Column 758W. It is not clear whether upon acquiring British nationality one has to declare whether one has renounced his/her previous nationality. From the answers given in Parliament, it would appear that there is no statistical data on how many citizens are dual nationals.

51 The Bill was introduced in the Commons on the 22 June 2005 and received royal assent on 30 March 2006. The provisions on deprivation of citizenship entered into force on 16 June 2006 via a commencement order.

52 <http://www.guardian.co.uk/politics/2005/aug/05/uksecurity.terrorism1>.

One of the hallmarks of the new counter-terrorism strategy is the use of immigration and nationality powers as efficient avenues for the physical removal of undesirable and dangerous individuals from the territory of the UK, which is also traceable in the *Immigration, Asylum and Nationality Act 2006*. The Act builds on two published Government proposals:

‘Controlling our borders: *Making migration work for Britain*’ (February 2005), the Home Office five-year strategy for asylum and immigration and ‘*Confident Communities in a Secure Britain*’, the Home Office Strategic Plan, 2004-2008 published in July 2004.⁵³ Under the 2002 Act, citizenship deprivation was possible if the person concerned had done something seriously prejudicial to vital national interests. Under the 2006 Act deprivation is possible under section 40(2) *if the Secretary of State is satisfied that such deprivation is conducive to the public good*.⁵⁴ Furthermore, the Secretary of State acquired a new power, namely, to withdraw the right of abode in the United Kingdom from any person whose exclusion or removal from the country he considers conducive to the public good, which suggests a new bifurcation between citizenship and residence.⁵⁵ Since the 2002 Act had already increased governmental power concerning citizenship deprivation, it was unclear why a further extension of those powers was necessary.⁵⁶ The Government’s argument was that the previous test was too high and involved too many hurdles, and generally, made it too difficult to deprive.⁵⁷

‘*Conducive to the public good*’ is a concept borrowed from immigration law where it is used in the context of deportation of non-nationals. The power to deport non-nationals is directly related with the power of the state to regulate the entry and stay of aliens. In international law, it is generally asserted that no similar power is to be exercised over one’s own citizens as this difference in treatment is one of the elements that differentiate between citizens and aliens.⁵⁸ From this perspective, it is problematic that dual British citizens are

53 Immigration, Asylum and Nationality Bill, Explanatory Notes, <http://www.publications.parliament.uk/pa/cm200606/cmbills/013/06013x.htm>.

The Immigration, Asylum and Nationality Bill, Research paper 05/52, 30 June 2005, House of Commons, p. 9.

54 Clause 56, Immigration, Asylum and Nationality Act 2006, chapter 13.

55 Clause 57, Immigration, Asylum and Nationality Act 2006, chapter 13. The government argued that the clause was necessary because in the case of persons whose right of abode derives from citizenship of a Commonwealth country (other than the UK) who engage in unacceptable behaviours there was no mechanism of deprivation of the right of abode. See, House of Commons Standing Committee E (pt 1), col 255.

56 ILPA Briefing, Terrorism Clauses 7, 50-54, House of Commons Report 16 November 2005 where they argue that the case for the new clause has not been made by the Government.

57 Baroness Ashton of Upholland, Lords Hansard text for 14 March 2006 (60314-29), col 1190.

58 ILPA evidence prepared for House of Commons Standing Committee, Committee sessions 27 October 2005, para. 19-20. ILPA has been extremely critical vis-à-vis the new test. They pointed out that in international law it is accepted that states have the right to control the admission and expulsion of aliens from their territories, but there is no such principle legitimizing the expulsion of a state’s own nationals.

equated with non-nationals as far as the protection against deprivation is concerned.⁵⁹ It also begs questions as to how tolerant British law actually is in relation to dual nationality. Because the law fails to define 'conducive to the public good', the Government's explanation as to how it intends to use the new powers is relevant:

*'This Bill is about immigration, asylum and nationality law, and the new clauses are about changes to that law in terms of what is happening now in our wider counter-terrorism initiative.' [...] 'Following the terrorist attacks in London on 7 July, the Home Secretary published a list of behaviours on 24 August which, he said, would form the basis for the use of his discretionary powers to deport and exclude from the United Kingdom those whose presence here was deemed not to be conducive to the public good. [...] It is, in our view, now essential that we have similar powers to withhold and to remove British nationality and the right of abode in the United Kingdom where an individual is found to have engaged in such activity.'*⁶⁰

The text points towards one of the main concerns expressed by most parties to the debate in Parliament, namely the conflation of terrorism, migration and nationality.⁶¹

The list of unacceptable behaviours published by the Home Secretary following the announcement by the Prime Minister in August 2005 of a twelve-point plan to deal with terrorism are part of the definition of national security and possibility leading to citizenship deprivation.⁶² The behaviours in question made their way into the *Terrorism Act 2006* as new offences.⁶³ According to the consultation paper published by the government, the list is indicative and it aims at dealing more fully and systematically with those who in effect, represent an indirect threat under the same categories, in particular those who foment terrorism or seek to provoke others to terrorist acts. The list includes actions such as writing, producing, publishing or distributing material, public speaking, including preaching, running a website, using a position of responsibility such as

59 Commission for Racial Equality, Briefing for the House of Lords, third reading, 14 March 2006, paras 35 and 38. See also, Lords Hansard text for 19 Jan 2006 (60119-31).

60 Mr. McNulty in House of Commons Standing Committee E (pt 1), col 254.

61 The 12-point plan on CT measures <http://www.guardian.co.uk/politics/2005/aug/05/uksecurity.terrorism1>. See also, House of Commons Hansard written Answers for 06 June 2007 (pt 0027), column 619W.

62 The National Security Strategy of the United Kingdom: Security in an interdependent world, March 2008, www.interactive.cabinetoffice.gov.uk/documents/security/national_security_strategy.pdf.

63 Terrorism Act 2006 and also the Racial and Religious Hatred Act 2006 which criminalised incitement to religious hatred.

teacher, community or youth leader to express views which the government considers to foment terrorism or seek to provoke others to terrorist acts, justify or glorify terrorism, foment other serious criminal activity or seek to provoke others to serious criminal acts, foster hatred which may lead to intra-community violence in the UK and advocate violence in furtherance of a particular belief.⁶⁴ The list has been criticized for its broad formulation, its overlapping of the behaviours targeted with criminal law offences and the use of deportation as a counter-terrorism measure in itself.⁶⁵

However, being a threat to the national security of the UK and therefore possibly coming within the scope of the citizenship deprivation powers should be understood in a larger context since UK's national security strategy has a much wider scope than terrorism. National security encompasses a vast range of issues including trans-national crime, nuclear weapons, global instability, climate change, poverty, inequality and poor governance etc. It is argued that while no state is currently threatening the United Kingdom, *'Over recent decades, our view of national security has broadened to include threats to individual citizens and to our way of life...'*⁶⁶ Taking into account this very broad construction of national security it is difficult to see how the mechanism of deportation or deprivation of citizenship on national security grounds might apply in cases of threats to global stability, for example.⁶⁷ The conclusion seems to be that it is operational only in respect of terrorism, trans-national crime and weapons of mass destruction, even if the threats are indirect.

⁶⁴ Exclusion or Deportation from the UK on non-conducive grounds: consultation document, www.homeoffice.gov.uk. G. Clayton (2012) Textbook on Immigration and Asylum Law, Oxford: OUP, p. 583; D. Bonner and R. Cholewinski (2007); M. Elliot (2006) United Kingdom : Detention without trial and the 'war on terror', International Journal of Constitutional Law, 4: 3, pp. 553-566

⁶⁵ Due to the criticism expressed, the government decided to delete from the initial list the expression of views that the government considers to be extreme views that are in conflict with the UK's culture of tolerance. Most organisations have seen this ground as an attack to the right to freedom of expression, which no terrorist attack could possibly justify. Response to Home Office Consultation on Exclusion or Deportation from the UK on Non-Conducive Grounds – Article 19, London, 2005 – Index Number: Law/190805; Exclusion or Deportation from the UK on Non-Conducive Grounds – A JUSTICE response, August 2005, www.justice.org.uk; Amnesty International Press release, UK: New security measures are a serious attack on human rights, 24 August 2005, <http://news.amnesty.org>.

⁶⁶ The National Security Strategy of the United Kingdom: Security in an interdependent world, March 2008, para. 1.3 and para. 1.5.

⁶⁷ Let us imagine a dual British German national who embezzles a large amount of money which leads to a severe financial crisis and the bankruptcy of pension funds leaving a couple of hundreds of thousands of persons without income. Would this situation lead to loss of citizenship or would it remain confined to the area of criminal law? For the time being, the only clear thing is that deprivation is considered in cases of involvement in terrorist activities of a specific group, Al-Qaeda.

6. The Immigration Act 2014 – naturalised citizens as ‘unsafe’ citizens

Although the number of citizenship deprivation orders has increased since 2010, the Conservative government (in power also since 2010) decided to amend the rules yet again. At the end of 2013, the Secretary of State for the Home Department, Theresa May, announced plans for a new immigration bill, which eventually was adopted as the *Immigration Act 2014*.⁶⁸ In addition to the overhaul of the immigration system,⁶⁹ the bill extended even further the power of the Secretary of State to make a citizenship deprivation order where the person acts in a manner seriously prejudicial to the vital interests of the UK. Under the new provision, the Secretary of State can make such an order even if the person will be made stateless, provided that nationality was obtained through naturalisation.⁷⁰ The Secretary of State must be satisfied that the deprivation is conducive to the public good because the person has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the UK.

During the debates in the House of Commons, the proposed changes were questioned in relation to issues of equality of treatment between naturalised citizens and citizens by birth, the procedural aspects of citizenship deprivation and the ineffectiveness of citizenship deprivation in countering terrorism and fundamentalism.⁷¹ These arguments are not new as they were raised during the adoption of the 2002 and 2006 provisions on citizenship deprivation in more or less the same fashion. However, the executive’s assurance that the new extended power to deprive was necessary in relation to national security and the threat posed by radicalised UK citizens who were travelling to join the civil war in Syria convinced the House of Commons to adopt the amendment. By the time the proposal reached the House of Lords, there was growing public interest and debate about the new citizenship deprivation proposals.⁷² The executive’s

68 Immigration Bill (HC Bill 110). For details see, <http://services.parliament.uk/bills/2013-14/immigration.html>. Immigration Act 2014 c.22; the act received royal assent on 14 May 2014.

69 According to the executive, the immigration bill aims to: (a) reform the removal and appeals system, making it easier and quicker to remove those with no right here; (b) end of abuse of Article 8, the right to respect for private and family life, and (c) prevent illegal immigrants accessing and abusing public services or the labour market.

70 Section 66 of the Immigration Act 2014 has introduced subsection (4A) into section 40 British Nationality Act 1981. A. Harvey (2014) Recent Developments on Deprivation of Nationality on Grounds of National Security and Terrorism resulting in Statelessness, *Journal of Immigration, Asylum and Nationality Law* 28:4, pp.339-341.

71 Immigration Bill 2013-2014, House of Commons Debates 30 January 2014, cols 1039-1052 and 1104.

72 Some felt that the citizenship deprivation powers detracted much needed attention from the other sweeping changes introduced by the immigration bill, A. Aliverti (2014) The New Immigration Act 2014 and the Banality of Immigration Controls, <http://bordercriminologies.law.ox.ac.uk/banality-of-immigration-controls/>

arguments concerning national security and the need for more expansive powers to deprive of citizenship did not convince the House of Lords, who rejected the amendment and instead proposed to defer to a parliamentary committee the question whether the UK executive should deprive of citizenship and make people stateless in the process.⁷³ Eventually a compromise was reached by introducing two safeguards. Firstly, the Secretary of State has to have reasonable grounds for believing that the person is able to become a national of another country or territory when making the citizenship deprivation order. Secondly, an independent reviewer will periodically review the exercise of the power to deprive. The Parliament accepted this compromise position and eventually the law was adopted and came into force on 28 July 2014.⁷⁴ The effects of these safeguards remain to be asserted in practice. Yet, it can be argued that they go only a very short way towards mitigating the effects of the new citizenship deprivation powers. Based on international law standards and the definition of statelessness, a person is either stateless or not, while UK's rules on citizenship deprivation actively create new stateless persons. The review of executive use of citizenship deprivation powers is in itself a welcome development. Up to now, the UK executive has been very reluctant to furnish any information concerning the persons it has deprived of citizenship and their circumstances, with most details coming from journalists. On a less positive note, it is unclear what consequences are attached to the review process: can it lead to new legislation or curtailment of executive powers?

The State Secretary confirmed that the UK executive did not intend to become a party to the 1997 European Convention on Nationality that does not allow deprivation to take place on grounds conducive to the public good if it results in statelessness.⁷⁵ In her opinion, the new provision simply brings back the law to the position prior to 2002, a position that is in line with the 1961 *UN Convention on the Reduction of Statelessness*. The UK has signed the Convention in 1966 but made a reservation in respect of citizenship deprivation. The UK retained the power that already existed in its legislation at the time of ratification to deprive a naturalised citizen, regardless of whether or not it might leave him stateless, where that person had conducted himself in a manner seriously prejudicial to the vital interests of her Majesty. In reality, on the issue of loss of citizenship, the UK is going back to its law as it stood at the beginning of the 20th century, despite all the advancements that have taken place since in international law concerning the human right to a nationality and the prevention of statelessness.

⁷³ House of Lords Report, 7 April 2014, col 1195.

⁷⁴ Immigration Act 2014 (Commencement No. 1, Transitory and Saving Provisions) Order 2014, SI2014/1820, art 3(t).

⁷⁵ House of Commons Debates, 30 January 2014, col 1041.

As the law stands, the test used in respect of naturalised citizens is *'conduct that is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory'*. When the bill was first introduced, the executive stated that it does not wish to be *'overly prescriptive about what this phrase means (seriously prejudicial to the vital interest of the UK) but we would envisage it covering those involved in terrorism or espionage or those who take up arms against British or allied forces.'*⁷⁶ The exact content of the test remains (yet again) unspecified by legislation but in the House of Commons, the Secretary of State has further explained that the actions viewed as prejudicial will be considered in light of the values attached to British citizenship as encapsulated by the oath that naturalised citizens take when they attend citizenship ceremonies.⁷⁷ She further stated that *'the whole point of the measure is to be able to remove certain people from the United Kingdom, which currently we are unable to do'*.⁷⁸ This aim remains valid even if in certain cases removal is not possible because person became stateless.

The Secretary of State was keen to emphasise that the power to deprive of citizenship equally applies to persons who are outside of the UK. She confirmed that since 2006, 27 persons were deprived of citizenship on conducive grounds, and 13 on grounds of fraud and that she made 16 orders. It needs to be highlighted that the number of persons deprived of citizenship is unclear. According to non-governmental sources that have been tracking developments in this field, in 2013 alone, the Home Secretary had taken away citizenship from 20 persons.

The number they quote since 2010 is 37 persons.⁷⁹ In Parliament, the Secretary of State failed to specify, how many of the persons deprived of citizenship were outside of the UK when the order was made and against how many of them exclusion orders from the UK were equally issued. Journalists have highlighted cases where UK citizens deprived of citizenship while in the Middle East were subsequently killed by American drone attacks or appeared in US high- security prisons.⁸⁰ Although the Home Office has refused to comment on these cases, the link between citizenship deprivation orders and their possible

⁷⁶ UK Government (2014) Immigration Bill, Fact sheet: Deprivation of citizenship (clause 60) January 2014.

⁷⁷ House of Commons Debates, 30 January 2014, col 1042.

⁷⁸ *Id.*, col 1043.

⁷⁹ The Bureau of Investigative Journalism has played an essential part in bringing these cases to the public's attention. The Bureau of Investigative Journalism (2013) 'Rise in citizenship-stripping as government cracks down on UK fighters in Syria', 23 December 2013.

⁸⁰ C. Woods, A. Ross & O. Wright (2013) 'British terror suspects quietly stripped of citizenship...then killed by drones', The Independent, 28 February 2013.

effects for the personal security of those deprived of citizenship is addressed in a document prepared by the Home Office to discuss the compatibility of the proposals introduced by the Immigration Act 2014 with the ECHR.⁸¹

The new powers to deprive of citizenship are a reaction to the decision taken by the Supreme Court in the *Al-Jedda* case where the UK executive was prevented from making a citizenship deprivation order against Mr Al-Jedda since that order would have left him stateless.⁸² The necessity of passing new legislation do deal with one specific case and, one may add, the executive's frustration at not being able to deprive one individual of his citizenship, was highlighted by the report of the Lords Committee on the Constitution as an aspect that needed further clarification and debate. The new provision is also an attempt to deal with UK citizens (believed to be) involved in terrorist training and fighting overseas, some of whom may consider returning to the UK. However, the new powers to deprive need to be seen within the larger context of UK's response to the phenomenon of British citizens travelling to the Middle East to join armed conflicts there. The UK executive has made use of powers to strip persons of their passports as a way of preventing them to travel to certain countries or, if already there, to return to the UK. Its position on the issue of passports is that British nationals do not have an automatic right to a passport.⁸³ The Home Secretary can refuse to issue a passport as well as withdraw or cancel one. The intersection of citizenship deprivation powers with terrorism and immigration was clearly spelled out by Prime Minister Cameron in a September 2014 speech in Parliament. He stated

*'As well as stopping people from going, we must also keep out foreign fighters who would pose a threat to the UK. [...] we legislated in the Immigration Act 2014, to allow stronger powers to strip citizenship from naturalised Britons. But, of course, these powers do not apply to those who are solely British nationals, who could be rendered stateless if deprived of citizenship. [...] what we need is a targeted, discretionary power to allow us to exclude British nationals from the UK.'*⁸⁴

81 Home Office (2014) Immigration Bill – European Convention on Human Rights: Supplementary Memorandum by the Home Office, <http://www.gov.uk/government/publications/immigration-bill-overarching-documents>.

82 *Al-Jedda v. SSHD* [2010] EWCA Civ 358; *SSHD v. Al-Jedda* [2013] UKSC 62. See also, Immigration Bill 2013-2014, House of Commons Debates 30 January 2014, col 1040.

83 <https://www.gov.uk/british-passport-eligibility>

84 House of Commons Debate, 1 September 2014, col 26.

The prospect of a discretionary power to exclude citizens from the UK poses a series of questions concerning UK's international law obligations that are beyond the scope of this paper. However, such a proposal comes dangerously close to expelling own nationals, a practice that is prohibited under international and human rights law and which is reminiscent of practices we normally associate with less enlightened times.

7. Citizenship and (in)security

The increasing powers of the State Secretary to deprive under the current legislation even British born nationals of their nationality provided that they engage in behaviour conducive to the public good suggests that certain citizens are increasingly perceived and treated by state officials as a threat or a risk that needs to be managed. The changing rules on citizenship deprivation and their actual implementation by the administration are explained as a downside of the liberalization of citizenship regimes within the last decades or as part of a larger securitizing trend that is linked with the emergence of terrorist threats after 9/11. And yet, the historical context in which citizenship deprivation powers were introduced suggests that the power to deprive of citizenship is intrinsically related to the configuration of modern nationality legislations. The UK has engaged in practices of citizenship deprivation during politically unstable times or during war, when the loyalty of citizens with a foreign background was questioned to the extent that some were stripped of their status. What is relevant here is the power of the state to use law to transform citizens into foreigners and violently impose the limits of national identity. The policing of political and social spaces through nationality powers is therefore not a new phenomenon. Historically, citizenship deprivation has been successfully mobilized to secure the boundaries of the nation from the perspective of state interests that deemed the ethnicity or race of some citizens to be a sign of their dangerousness and irreconcilable difference.

Although most authors considered citizenship deprivation to be a practice of the past, the UK example shows that is simply not the case. The UK changes can be explained as part of the executive's securitizing agenda triggered by the war on terror in the post-9/11 context. This security drive has affected nationality and immigration laws and generated the twin effects of making it more difficult to acquire nationality and easier to lose it. There are several arguments that can be put forward towards reading the extension of the power to deprive of citizenship as a counter-terrorism measure. The UK has joined the

USA from the beginning in the ‘war on terror’ and has participated in the invasions of Afghanistan and Iraq which suggest that national security issues were indeed relevant for the formulation of policy more generally. The issue of home grown terrorists gained even more prominence after the 2005 attacks in London that were operated by British born Muslims. From this angle, the 2006 and 2014 Acts could easily be inscribed within the discourse and agenda on anti-terrorism. The first changes introduced in 2002 are more difficult to inscribe within a purely counter-terrorist agenda, as the proposal to amend the rules on citizenship deprivation was part of an ongoing discussion about the meaning and value of British citizenship and Britishness, more generally. According to Fortier, the race riots of 2001 sprung a concern for ‘white Britons’ and the management of difference, as multiculturalism was increasingly perceived as a failure.⁸⁵ The British executive became increasingly preoccupied with the meaning of citizenship and Britishness and how to inject valour into the notion of British citizenship, not least by emphasizing that it is a legal status that can be lost by those who engage in acts that go against the interests of the state. Tyler has traced the idea that British citizenship is not an entitlement back to the 1981 British Nationality Act that was adopted during a period of ‘*intense institutional reorganisation that was to transform Britain into a neoliberal nation-state*’.⁸⁶ Tyler argues that the 1981 BNA was design to fail certain categories of former colonial subjects and delegitimize their claims to citizenship and that ‘by the early 1980’s citizenship had become dislocated from any redistributive ideals: the Marshallian constellation of *welfare state, social rights and class equality* was replaced with *nationality, immigration and security*’.⁸⁷ According to Bosworth and Guild, this interlinked approach to citizenship was continued under the New Labour governments (1997-2007) that in an ‘*often contradictory manner have promoted the ideal of citizenship while eroding its protections*’.⁸⁸

The 2002, 2006 and 2014 Acts that have modified the rules on citizenship deprivation have to be analysed as part of this larger process of reshaping the meaning of belonging and membership while at the same time immigration and asylum were being rephrased as security issues.

85 A-M. Fortier (2010) Proximity by design? Affective citizenship and the management of unease, *Citizenship Studies* 14:1, pp. 17-30. Fortier discusses the development of a cohesion agenda that aimed at creating cohesive communities and preventing people from living parallel lives. She notices a similar trend whereby the cohesion agenda became gradually tied in with criminal justice, immigration and security agenda (p. 20).

86 I. Tyler (2010) Designed to Fail: A Biopolitics of British Citizenship, *Citizenship Studies* 14:1, p. 62.

87 Ibid.

88 M. Bosworth and M. Guild (2008) Governing Through Migration Control, *British Journal of Criminology* 48, p. 706.

In this context it is relevant that allegiance has made a comeback within the legal formulation of citizenship rules as the duty of loyalty is increasingly underlined in state discourses on membership. Loyalty is legally phrased as an obligation not to engage in conducts deemed undesirable by the state. At the same time, loyalty occupies an important discursive space in political imaginaries about what it means to be a citizen. In the UK context, holding dual nationality is suspect and invites questions as to one's loyalty especially if one travels back to one's region of origin or participates in political dissidence related to one's place of origin. Thus, one can conclude that despite being allowed to maintain transnational ties and a transnational identity by means of preserving one's nationality of origin, transnationalism remains politically dubious and may be interpreted as a sign of disloyalty should the need arise.

Naturalised citizens and citizens of immigrant descent (through their dual nationality) are targeted by citizenship deprivation measures leading to the question as to when one ceases to be a foreigner. What is equally problematic is the attempt to challenge the legal reply to this question that is encapsulated by the internationally recognized principles that all citizens are equal before the law and that the manner in which they have acquired their citizenship is irrelevant.⁸⁹ Yet, as Honig has argued

*'Foreignness is a symbolic marker that the nation attaches to the people we want to disavow, deport or detain because we experience them as a threat. The distinction between who is part of the nation and who is an outsider is not exhausted or even finally defined by working papers, skin colour, ethnicity or citizenship. Indeed, it is not an empirical line at all; it is a symbolic one, used for political reason.'*⁹⁰

The mobilisation of political capital in the quest to thin out the citizenship status of some categories of citizens who are perceived as unworthy of that quality or dangerous has achieved mixed results. On one hand, there is a hierarchy of citizens developing, as those citizens who are deprive-able seem to occupy an intermediate position between 'real' citizens and foreigners. Nyers has captured extremely well the significance of this move when he argued that *'...unmaking citizens through performative or political means – by insisting, for example, that certain citizens are unworthy of the status – is often a key condition*

⁸⁹ Article 5/2 ECN; Article 7 UDHR.

⁹⁰ B. Honig (2002) A Legacy of Xenophobia, Boston Review 27:6, available at <http://new.boston-review.net/BR27.6/honig.html>.

for unmaking citizenship through law'.⁹¹ On the other hand, the difficulties encountered by the UK executive when it actually started to deprive citizens of their status (especially in the Al- Jedda case) speak volumes for the fact that state power is not unrestricted and that state sovereignty is limited by international obligations (the statelessness issue) and their application by (national) courts. Understanding why citizenship deprivation rules were changed is important as the attempt to change the established rules in this area of law point towards underlying transformations in the framing of concepts such as, the nation, the ideal of the citizen and the relationship between state, citizen and society.

7. Citizenship and (in)security

If citizenship is a privilege (as the UK executive insists on arguing) then citizenship is by all means not a secure legal status. The changes operated to loss of citizenship should be seen in a wider context and not primarily linked with the executive's capacity to fight security threats epitomized by Muslim terrorism, despite official discourses to this extent. There is an increasingly strong nexus developing between nationality, immigration and security in which all three components are equally important in understanding the larger processes at work.

The UK example shows that the rules on loss of citizenship are important in understanding the relationship between citizen and the state since they also express ideals of membership and identity. Citizenship deprivation powers can be seen as acts of sovereignty but also as 'technologies of citizenship' that explain how citizenship is made and unmade.⁹² It is worth underlying that citizenship even when discussed as a legal status, is not a given; it is born out of contestation and a process of claim-making. The legal rules applicable to citizenship acquisition and loss are designed to operate as inclusinary/exclusionary practices that define the citizenry within a political unit. It is in this sense, that they help make and un-make citizenship by reinforcing the rules of membership and above all by trying to fix the coordinates of national identity. A large part of citizenship literature has been preoccupied with the demise of the nation state and its underlying ideology of sovereignty. Processes as varied as globalization, the rise of the human rights regimes, migration or global economic flows were seen as challenging the capacity of the state to deliver its side of

⁹¹ P. Nyers (2010) Dueling designs: The politics of rescuing dual citizens, *Citizenship Studies* 14:1, p. 49.

⁹² P. Nyers (2010) Dueling designs: The politics of rescuing dual citizens, *Citizenship Studies* 14:1, pp. 47-60.

the social contract. As Nyers reminds us *'the provision of safety, security and protection is key to the perceived legitimacy of any state'*.⁹³ It is also important to note that these values are primarily designed to be enjoyed by citizens within the cocooned space of the national state, which helps explain the desirability of citizenship as a legal status since it embodies our *'dreams and aspirations of the good life'*.⁹⁴ Claims that we are moving beyond the citizenship-versus-statelessness model since *'the difference between having and not having citizenship is becoming blurred as the territorialisation of entitlements is increasingly challenged by deterritorialised claims beyond the state'*⁹⁵ proclaim the end of state monopoly over the delivery of the 'good life'. Human rights and, in the EU context, the development of supranational EU citizenship rights and rights for certain categories of TCNs were seen as the main challenges to the existing design of membership.

The case of citizenship deprivation powers fits well with those theories suggesting that national citizenship is not irrelevant but that it is itself being altered in order to meet the challenges posed by globalization and migration.⁹⁶ Writing in the context of Europe, Kofman has noted that in some ways the relationship between citizenship and nationality seems to be weakening, especially when it comes to the disconnection between the delivery of EU rights and nationality while at the same time it is being recast in other areas. As such, while the state is the object upon which globalization and human rights act, it is also clearly a subject that re-acts to these processes.⁹⁷ Her analysis points in the direction of the state's capacity to reassert its sovereignty within these new geometries of power *'by demanding the affirmation of belonging and loyalty, leading to greater emphasis on obligations in the practice of citizenship'*.⁹⁸ Although we are accustomed to think of state sovereignty as the founding legal principle of the international order and the power of the state to govern internally, it should be equally underlined that sovereignty is a practice and as such it can be described as *'historical, performative, constantly in motion'*.⁹⁹ In the field of citizenship, the need to constantly reassert sovereignty is captured by the design of safe and loyal citizens. This project is legal, in the sense that it depends upon

⁹³ Nyers (2010) p. 51.

⁹⁴ Ibid., p. 47.

⁹⁵ A. Ong (2006) Mutations in Citizenship, *Theory, Culture & Society* 23, p. 500.

⁹⁶ K. Nash (2009) Between Citizenship and Human Rights, *Sociology* 43, pp. 1067-1083.

⁹⁷ E. Kofman (2005) Citizenship, Migration and the Reassertion of National Identity, *Citizenship Studies* 9:5, pp. 453-467.

⁹⁸ Ibid., p. 453.

⁹⁹ P. Nyers (2006) The accidental citizen: acts of sovereignty and (un)making citizenship, *Citizenship Studies* 35:1, p. 26.

legal rules of citizenship attribution, as well as political since it puts forward a model of worthy citizens: new citizens among others have to be economically self-sufficient, have a high moral standing, be culturally integrated, and above all conform to state defined values and objectives.